

(e) Results of patient experience of care survey and claims based measures. Quality measures reported using the GPRO web interface will be reported on Physician Compare in the same way as for the group practices that report under the Physician Quality Reporting System.

**§ 425.310 Marketing requirements.**

(a) *File and use.* Marketing materials and activities, as defined in § 425.20, may be used or conducted five business days following their submission to CMS if—

(1) The ACO certifies compliance with all the marketing requirements under this section; and

(2) CMS does not disapprove the marketing materials or activities.

(b) *Deemed approval.* (1) Marketing materials and activities are deemed approved after expiration of the initial 5 day review period specified in paragraph (a) of this section.

(2)(i) CMS may issue written notice of disapproval of marketing materials and activities at any time, including after the expiration of the initial 5 day review period.

(ii) The ACO, ACO participant, ACO provider/supplier, or another individual or entity performing functions or services related to ACO activities as applicable, must discontinue use of any marketing materials or activities disapproved by CMS.

(c) *Marketing requirements.* Marketing materials and activities must meet all of the following:

(1) Use template language developed by CMS, if available.

(2) Not be used in a discriminatory manner or for discriminatory purposes.

(3) Comply with § 425.304(a) regarding beneficiary inducements.

(4) Not be materially inaccurate or misleading.

(d) *Sanctions.* Failure to comply with this section will subject the ACO to the penalties set forth in § 425.216, termination under § 425.218, or both.

**§ 425.312 Notification to beneficiaries of participation in shared savings program.**

(a) ACO participants must do all of the following:

(1) Notify beneficiaries at the point of care that their ACO providers/suppliers are participating in the Shared Savings Program.

(2) Post signs in their facilities to notify beneficiaries that their ACO providers/suppliers are participating in the Shared Savings Program.

(3) Make available standardized written notices regarding participation in an ACO and, if applicable, data opt-out. Such written notices must be provided by the ACO participants in settings in which beneficiaries receive primary care services.

(b)(1) ACOs have the option of notifying beneficiaries on the preliminary prospective assignment list and quarterly assignment list provided to the ACO under § 425.704(d).

(2) ACOs choosing this option must use the standardized written notice developed by CMS.

(c) The beneficiary notifications under this section meet the definition of marketing materials and activities under § 425.20 and therefore must meet all applicable marketing requirements described in § 425.310.

**§ 425.314 Audits and record retention.**

(a) *Right to audit.* The ACO must agree, and must require its ACO participants, ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities to agree, that the CMS, DHHS, the Comptroller General, the Federal Government or their designees have the right to audit, inspect, investigate, and evaluate any books, contracts, records, documents and other evidence of the ACO, ACO participants, and ACO providers/suppliers, and other individuals or entities performing functions or services related to ACO activities that pertain to all of the following:

(1) The ACO's compliance with Shared Savings Program.

(2) The quality of services performed and determination of amount due to or from CMS under the participation agreement.

(3) The ability of the ACO to bear the risk of potential losses and to repay any losses to CMS.

(4) If as a result of any inspection, evaluation, or audit, it is determined that the amount of shared savings due